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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 15-40-A**  
**AGENDA ITEM**  
**For meeting of July 16, 2015**  
**SUBMITTED LATE**

July 14, 2015

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK by AN*  
Assistant General Counsel

Theodore M. Lutz *TML by AN*  
Sean J. Wright *SJW by AN*  
Attorneys

Subject: AO 2015-02 (Grand Trunk Western Railroad PAC) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 5:00 pm (Eastern Time) on July 15, 2015.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2015-02  
2  
3 Michael J. Barron, Jr., Esq.  
4 Fletcher & Sippel LLC  
5 29 North Wacker Drive  
6 Suite 920  
7 Chicago, IL 60606-2832

**DRAFT A**

8 Dear Mr. Barron:

9 We are responding to your advisory opinion request on behalf of the Grand Trunk  
10 Western Railroad Company – Illinois Central Railroad Company Political Action Committee  
11 concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the  
12 “Act”), and Commission regulations to the requestor’s contribution-matching program. The  
13 requestor asks whether its connected organizations may match contributions made to the  
14 requestor with charitable donations to a Canadian registered charity. The Commission concludes  
15 that the proposal is consistent with the Act and Commission regulations.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter dated May 27, 2015,  
18 and filings and information on the website of the Canada Revenue Agency.

19 The requestor is a separate segregated fund (“SSF”) of Grand Trunk Western Railroad  
20 Company and Illinois Central Railroad Company. The requestor operates a “charity-match”  
21 program, under which its connected organizations make donations to the charity of a  
22 contributor’s choice in an amount equal to the contributor’s contribution to the requestor. The  
23 requestor states that it operates the charity-match program to attract contributions and that a  
24 contributor does not receive any tangible benefits from the requestor, its connected  
25 organizations, or the charity as a result of the contribution or the matching donation.

1           An individual contributor to the requestor wishes to designate the Taylor Birks  
2 Foundation (the “Foundation”) as the recipient of a matching charitable donation. The  
3 Foundation is a Canadian charity headquartered in Montreal. The Foundation provides financial  
4 support to projects that assist children with intellectual disabilities. The Foundation is not a  
5 501(c)(3) charity but is a “registered charity” under Canadian law.<sup>1</sup> The requestor asks whether  
6 it may make a matching donation to the Foundation.

7 ***Question Presented***

8           *May the connected organizations make a dollar-for-dollar matching donation to a non-*  
9 *501(c)(3) charity, such as the Foundation, if the Foundation is designated by a PAC contributor*  
10 *as the charity of choice to receive the donation?*

11 ***Legal Analysis and Conclusions***

12           Yes, the connected organizations may make a dollar-for-dollar matching donation to the  
13 Foundation.

14           The Act provides that a corporation may use its general treasury funds to pay the  
15 expenses of establishing and administering a separate segregated fund (“SSF”) and of soliciting

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<sup>1</sup> The Foundation’s registration number with the Canada Revenue Agency is 11892 5296 RR0001. Additional information about the Foundation, including recent Information Returns, is available at the Canada Revenue Agency’s website. See Canada Revenue Agency, Charities Listing, <http://www.cra-arc.gc.ca/chrts-gvng/1stngs/menu-eng.html> (last visited June 16, 2015).

Like 501(c)(3) organizations, registered charities are “exempt from paying income tax” and may issue “donation receipts,” which enable donors to claim certain tax benefits. Canada Revenue Agency, Registered Charity vs. Non-Profit Organizations, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/rght-eng.html> (last visited June 16, 2015); Canada Revenue Agency, Does a Registered Charity Have to Issue Official Donation Receipts for Gifts It Receives?, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtnng/rcpts/rqss-eng.html> (last visited June 16, 2015). Registered charities must “operate exclusively for charitable purposes,” meet certain spending thresholds with respect to their charitable activities, file annual returns, and are prohibited from “us[ing] [their] income to personally benefit [their] members.” Canada Revenue Agency, Registered Charity vs. Non-Profit Organizations, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/rght-eng.html> (last visited June 16, 2015); see also Canada Revenue Agency, Obligations of Registration, <http://www.cra-arc.gc.ca/chrts-gvng/chrts/pplyng/rgstrtn/blr-eng.html> (last visited June 16, 2015).

1 contributions to that SSF. 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.5(b). Commission  
2 regulations further provide, however, that a corporation may not “use the establishment,  
3 administration, and solicitation process as a means of exchanging treasury monies for voluntary  
4 contributions.” 11 C.F.R. § 114.5(b). The regulations also state that a contributor may not be  
5 paid for his or her contributions through a bonus, expense account, or other form of direct or  
6 indirect compensation. 11 C.F.R. § 114.5(b)(1).

7 In numerous advisory opinions, the Commission has approved a connected organization’s  
8 provision of contribution-matching donations to organizations operated under section 501(c)(3)  
9 of the Internal Revenue Code. Because such matching donations “encourage greater  
10 participation” in the SSF, *see* Advisory Opinion 1986-44 (Detroit Edison PAC) at 1; Advisory  
11 Opinion 2003-04 (Freeport-McMoRan Copper & Gold Citizenship Committee) at 1, the  
12 Commission has found that they are solicitation expenses for the SSF that the connected  
13 organization may pay under 52 U.S.C. § 30118(b)(2)(C). *See, e.g.*, Advisory Opinion 2003-04  
14 (Freeport-McMoRan Copper & Gold Citizenship Committee) (approving charity-match  
15 program); Advisory Opinion 1994-06 (Political Action Coors Employees) (same); Advisory  
16 Opinion 1986-44 (Detroit Edison PAC) (same). And the Commission has concluded that a  
17 charity-match program does not constitute a prohibited exchange of corporate treasury monies  
18 for political contributions as long as no contributor to the SSF receives in exchange a financial,  
19 tax, or other tangible benefit from the corporation, the SSF, or the charities receiving the  
20 matching donations. *See, e.g.*, Advisory Opinion 2003-04 (Freeport-McMoRan Copper & Gold  
21 Citizenship Committee) (approving charity-match program); Advisory Opinion 1994-06  
22 (Political Action Coors Employees) (same); Advisory Opinion 1986-44 (Detroit Edison PAC)  
23 (same).

1           The requestor’s proposal is materially indistinguishable from the charity-match programs  
2 approved in prior advisory opinions. Like those previously approved programs, the requestor’s  
3 connected organizations wish to make matching donations to “attract[ ] contributors” to the PAC.  
4 Advisory Opinion Request at AOR001. Such “matching of voluntary political contributions with  
5 charitable donations [is] a solicitation expense related to [their] separate segregated fund, an  
6 expense . . . that the Act expressly permits.” Advisory Opinion 1988-48 (National-American  
7 Wholesale Grocers’ Association PAC) at 2 (citing current 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R.  
8 § 114.5(b)).

9           Additionally, “no tangible benefits . . . [are] given to the PAC contributor from either [the  
10 requestor], the connected organizations, or the charity in response to the contributor’s  
11 contribution.” AOR001. Thus, the requestor’s proposal does not constitute an “exchange of  
12 corporate treasury monies for voluntary contributions,” 11 C.F.R. § 114.5(b), or suggest that the  
13 contributor is being “paid for” the contribution. 11 C.F.R. § 114.5(b)(1). *See, e.g.*, Advisory  
14 Opinion 1994-07 (GEON PAC); Advisory Opinion 1987-18 (Texas Industries PAC); Advisory  
15 Opinion 1986-44 (Detroit Edison PAC).

16           The requestor’s connected organizations may make a matching donation to the  
17 Foundation, as proposed.<sup>2</sup>

18           The Commission expresses no opinion regarding any tax ramifications of the described  
19 activity because such matters are not within the Commission’s jurisdiction.

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<sup>2</sup>           The Commission notes that the Foundation’s *receiving* of donations does not implicate the Act’s prohibition on foreign nationals *making* any contribution or donation in connection with an election. *See* 52 U.S.C. § 30121(a); 11 C.F.R. § 110.20(f). Commission regulations provide that foreign nationals may not “direct, dictate, control, or directly or indirectly in participate in the decision-making process of any . . . corporation . . . [or] political committee” with respect to election-related activities, 11 C.F.R. § 110.20(i), but the request presents no facts that suggest the Foundation is in any way doing so.

